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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/800,769	03/15/2004	Aavishkar Bharara	16IN0224	2653
7590 Patrick W. Rasche Armstrong Teasdale LLP Suite 2600 One Metropolitan Square St. Louis, MO 63102				
			EXAMINER NGUYEN, VAN H	
			ART UNIT 2194	PAPER NUMBER
			MAIL DATE 04/14/2009	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/800,769

Applicant(s)

BHARARA, AAVISHKAR

Examiner

VAN H. NGUYEN

Art Unit

2194

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 December 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SG/US)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. This communication is responsive to the amendment filed 12/18/2008.

Claims 1-15 are currently pending in this application. Claims 16-20 have been cancelled.

Claim Rejections - 35 USC § 101

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-8 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. under 35 U.S.C. 101

Regarding independent claim 1, the claim recites a “system” comprising “a graphical user interlace” and “a framework”. As currently recited the “system” comprises only computer software element(s). Thus, the claim is a program per se and does not fall within any of the four enumerated categories of patentable subject matter in section 101.

For the same reasons discussed supra with respect to independent claim 1, dependent claims 2-8 fall outside the scope of § 101.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Ying et al.** (US 6147967 A) in view of **Menard et al.** (US 7065566 B2).

As to claim 1:

Ying teaches a system including a multi-tier application architecture having a middletier, the system comprising: a framework to mediate between an application within a front-end tier and the middletier, wherein the framework is configured to: allow the to execute an object fetched by the application from a cache; when the execution of the object fails, repeatedly refresh the object within a limited number of retries; when the object refresh succeeds, return the object to the cache and again allow the middletier to execute the object; and when the object refresh does not succeed within the limited number of retries, quit the application in fail-safe way (see col.3, lines 16-31; col.5, lines 3-53; col.7, line 64-col.8, line 50; col.9, line 59-col.10, line 8; and col.20, line 17-col.21, line 48).

Ying, however, does not specifically teach a graphical user interface output an operational state of the framework using the graphical user interface.

Menard teaches a graphical user interface output an operational state of the framework using the graphical user interface (col.7, lines 1-39 and col.10, lines 3-28).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify Ying with Menard because it would have provided an improved system and method for managing the dynamic relationships between each of the major components of business systems by making use of a knowledge base and collected data to diagnose, analyze, and resolve problems in real time.

As to claim 2:

The rejection of claim 1 above is incorporated herein in full. Additionally, Ying teaches allow user to specify the limited number of retries (col.14, lines 34-50; col.15, line 13-col.16, line 59)

As to claim 3:

The rejection of claim 1 above is incorporated herein in full. Additionally, Ying teaches allow user to specify a time interval between the retries (see col.14, lines 34-50; col.15, line 13-col.16, line 59).

As to claim 4:

The rejection of claim 1 above is incorporated herein in full. Additionally, Ying teaches the framework operations are visible to a user (see col.14, lines 34-50; col.15, line 13-col.16, line 59).

As to claim 5:

Ying teaches a watchdog configured to resume normal operations when the middletier crashes (see col.15, line 13-col.16, line 59 and col.19, line 49-col.20, line 9).

As to claim 6:

Ying teaches the watchdog is configured to recover a middletier based on a result of periodical polling (see col.15, line 13-col.16, line 59 and col.19, line 49-col.20, line 9).

As to claim 7:

Ying teaches the watchdog is configured to recover a middletier based on notification from the framework (see col.15, line 13-col.16, line 59 and col.19, line 49-col.20, line 9).

As to claim 8:

Ying teaches a logic controller, a detector, a refresher, and a quitter (see col.15, line 13-col.16, line 59 and col.19, line 49-col.20, line 9).

As to claims 9-15:

Refer to claims 1-8 above for rejections.

Response to Arguments

4. Applicant's arguments filed 12/18/2008 have been fully considered but they are not persuasive.

Applicant simply points out what are cited in each of the claims and asserts that the references do not meet the claimed limitations (see the remarks, pp. 6-9).

In the Office Action, the examiner points out relevant passages in the reference to show how the reference meet the claim limitations. Applicant in response did not provide any underlying analysis as to why the portions of the prior art relied on did not support the examiner's position.

This response by Applicant is insufficient to satisfy the requirement of specific argument to have the claims considered for patentability; in accordance with 37 C.F.R. § 1.111 Applicant must distinctly and specifically point out "how the language of the claims patentably distinguishes them from the references". Accordingly, a prima facie case of obviousness is maintained as set forth in the rejections above.

Conclusion

5. The prior art made of record, listed on PTO 892 provided to Applicant is considered to have relevancy to the claimed invention. Applicant should review each identified reference carefully before responding to this office action to properly advance the case in light of the prior art.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Contact Information

6. Any inquiry or a general nature or relating to the status of this application should be directed to the TC 2100 Group receptionist: (571) 272-2100.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to VAN H. NGUYEN whose telephone number is (571) 272-3765. The examiner can normally be reached on Monday-Thursday from 8:30AM-6:00PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, MENG-AI AN can be reached at (571) 272-3756.

The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/VAN H NGUYEN/
Primary Examiner, Art Unit 2194